

# 2013 Guidebook for Political Action Committees & Ballot Question Committees: Municipal Edition

## Municipal PAC & BQC Guidebook



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND  
ELECTION PRACTICES

Publication Date: April 2013. The information in this Guide reflects statutory changes through the Second Regular Session of the 125th Legislature and recent amendments to the Commission’s rule that became effective in 2012. Its contents are subject to statute changes adopted in subsequent sessions of the Legislature and rule changes approved under the Maine Administrative Procedure Act.

The Commission has taken care to make this Guide concise and accurate. However, you should not substitute the information presented here for the applicable statutory provisions of the Election Law. The statutory and regulatory requirements are controlling in the event of any omission in this publication.

Please refer to the Commission’s statutes and rules at: <http://www.maine.gov/ethics/laws/index.htm>

The towns and cities in Maine with a population of 15,000 or more according to the 2010 U.S. Census are:

Auburn	Gorham	Scarborough
Augusta	Lewiston	South Portland
Bangor	Portland	Waterville
Biddeford	Saco	Westbrook
Brunswick	Sanford	Windham

Standish and Union have elected to be subject to the provisions of Chapter 13 with respect to referenda and initiatives, but not candidate elections. (30-A M.R.S.A. § 2502(2))



## Commission on Governmental Ethics and Election Practices

The Commission is pleased to publish this edition of the Guidebook for Municipal Political Action Committees and Ballot Question Committees . As always, the Commission staff is available to assist you with any questions regarding campaign finance laws and reporting requirements for candidates, political action committees, ballot question committees and State and local party committees. The Commission may be reached by calling (207) 287-4179.

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# Chapter 1

## Getting Started

Political action committees and ballot question committees that seek to influence candidate elections or referenda in a municipality that is subject to Maine’s Election Law must submit all required materials to the municipal clerk in the city or town in which the committee is operating. The Ethics Commission does not oversee the administration of Election Law to municipal committees except in enforcement matters upon request of a municipality.

Town and Cities Subject to Campaign Finance Law	
Auburn	Saco
Augusta	Sanford
Bangor	Scarborough
Biddeford	South Portland
Brunswick	Waterville
Gorham	Westbrook
Lewiston	Windham
Portland	
Standish and Union have chosen to be subject to campaign finance laws for municipal referenda but not for candidate elections.	

### What is a Political Action Committee

Organizations and groups that raise or spend money to influence or initiate municipal elections or referenda in towns or cities with a population of 15,000 or more may be required to register as a political action committee (PAC) and file campaign finance reports with the municipal clerk’s office.

A political action committee is an organization that meets one of the following definitions:

- Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign.

*Example:* A corporation establishes a fund to which employees contribute. The fund is then used to pay for political activities to support or oppose candidates or issues.

*Note:* This type of committee must register once it receives or spends more than \$1,500 for the purpose of initiating or influencing a campaign in Maine.

- Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum.

*Example:* A voluntary association whose stated purpose is to elect more women to the Legislature.

- Any organization that does not have as its ma-



for purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.

*Example:* An association of outdoor sporting enthusiasts which is organized for the purpose of promoting hunting and fishing in Maine spends money to support a group of candidates who are proponents of the interests and goals of the association.

*Note:* If involved in a citizen initiative or people's veto or other referendum, the organization may have to register as ballot question committee.

### **What is a Ballot Question Committee**

Most organizations that raise or spend money to influence a municipal ballot question are defined as PACs. However, some advocacy, charitable, or other organizations that influence ballot question elections do not qualify as PACs under Election Law.

A group that does not meet the PAC definition but which receives or spends more than \$5,000 to initiate or influence a municipal ballot question is considered a ballot question committee (BQC). Just like PACs, these organizations must register and file campaign finance reports with the municipal clerk.

*Tip:* If the organization's major purpose is not to influence Maine elections and it becomes involved in a ballot question election in Maine, it is a BQC.

*Note:* Contributions and expenditures to influence the

nomination or election of a *candidate* do not count toward the \$5,000 threshold for BQCs.

### **Organizations Not Required to Register**

If, within the prior two years, an organization's only payments of money for the purpose of influencing a campaign in Maine are contributions to registered candidates, party committees, PACs or BQCs, the organization does not have to register. However, if the group raises the funds for the specific purpose of contributing to the candidate, party committee, PAC or BQC, rather than contributing from the organization's general treasury, this exception is not available.

For information on an organization's political contribution and expenditure history, contact the Commission or visit the Commission's public access website at [www.maineecampaignfinance.com](http://www.maineecampaignfinance.com).

### **Other important terms**

*Influence.* To "influence" means to promote, support, oppose or defeat.

*Initiate.* To "initiate" includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

*Campaign.* For purposes of the PAC and BQC definition, the term "campaign" means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Sec-



tion 18;

- An amendment to the Constitution of Maine under Article X, Section 4;
- A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- The ratification of the issue of bonds by the State or any agency thereof; and
- Any county or municipal referendum.

**Contribution.** The term “contribution” includes:

- A gift, subscription, loan, advance or deposit of money or anything of value made to a PAC or BQC, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

**Who may contribute to a PAC or BQC?**

In general, Maine Election Law does not place any restrictions on who may contribute to a PAC or BQC.

The only exception is that, during a legislative session, lobbyists and their clients may not contribute to a PAC in which certain governmental officials are involved.

**Are there any limits on contributions to a PAC or BQC?**

No. Maine law does not place any limit on the amount of a contribution to a PAC or BQC.

- A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a PAC or BQC;
- Any funds received by a PAC or BQC that are to be transferred to any candidate, committee,

campaign or organization for the purpose of initiating or influencing a campaign; or

- The payment, by any person or organization, of compensation for the personal services of other persons provided to a PAC or BQC that is used by the PAC or BQC to initiate or influence a campaign.

In determining whether an organization is a ballot question committee, the term “contribution” also includes money or anything of value received for the purpose of initiating a referendum or people’s veto or influencing a ballot question election. This includes:

- Funds that the contributor specified were given in connection with a ballot question;
- Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a ballot question;
- Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question; and
- Funds or transfers from the general treasury of an organization filing a ballot question report.

**Expenditure.** The term “expenditure” includes:

- A purchase, payment, distribution, loan, advance, deposit or gift of money, or anything of value, made for the purpose of initiating or influencing a campaign;





- A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make an expenditure to influence or initiate a campaign; and
- The transfer of funds by a political action committee to another candidate or political committee (e.g., another PAC, a candidate committee, a party committee, or a ballot question committee).

If you have any questions about whether your organization qualifies as a PAC or BQC under these definitions, please contact the municipal clerk.

### **Registering with the Municipal Clerk**

Any organization that meets the criteria for being a PAC or BQC in a municipal campaign must register with the clerk in the municipality in which the PAC or BQC is operating no later than 7 calendar days after it qualifies as a PAC or BQC, i.e., after it has raised or spent \$1,500 or \$5,000 whichever threshold amount is applicable. It is important for an organization to keep track of its contributions and expenditures from the beginning of its campaign-related activities in order to know if and when it has to register. An organization does not have to wait until it reaches the monetary threshold to register. Many organizations register before they raise or spend any money because they know they will be politically active and will eventually qualify as a PAC or BQC.

The organization must file an initial campaign finance report at the same time it registers with the municipality (see below).

There is no fee to register a PAC or BQC. However, a PAC or BQC that does not register with the municipi-

ality or that registers late may be subject to a \$250 fine and may be assessed additional penalties for a late-filed initial campaign finance report.

**Registration Form.** The organization must provide the name and contact information for the PAC's or BQC's treasurer and its principal officers. It must also identify all primary fundraisers and decision-makers, including any Legislators and candidates who have a significant role in fundraising or decision-making. The organization must state its purpose: whether it supports or opposes candidates, referenda, an initiated petition, or other campaigns. If the PAC or BQC is involved in a specific ballot question, the ballot question should be identified by its popular name or the bill title as well as the question number, if it has one. If the purpose of the PAC is more general, the statement should be as descriptive as possible, e.g., opposes statewide or local liquefied natural gas facilities in Maine.

The Secretary of State, the State Treasurer, the Attorney General, and the State Auditor, and any candidates for these offices may not form a PAC or be involved in decision-making for or soliciting contributions to any PAC. These officials are elected by a vote of the Legislature, not the public.

It is important that the committee fully complete the form, as missing or incomplete information can delay the registration process. The registration form can be obtained from the municipal clerk's office or by visiting the Commission's website: [www.maine.gov/ethics](http://www.maine.gov/ethics).

If at any time the information provided on the registration form changes—contact information, treasurer or officer information or statements of support and opposition—the committee must file an amended registration within 10 calendar days of the change.



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**Initial Campaign Finance Report.** The initial campaign finance report is due at the time of registration. PACs must report all contributions and expenditures made since January 1st of the reporting year. BQCs must report all contributions and expenditures made since the beginning of the campaign.

All expenditures made in carrying out the committee's political activities and general operations must be tracked so that a committee can ensure that it registers in a timely fashion. Expenditures that are most commonly overlooked by committees include:

- Expenditures associated with the collection of signatures - this also applies to expenditures by the opponents of a citizen initiative or people's veto petition drive.
- Paid staff time or paid consultants and pollsters or other personal services costs.
- Travel reimbursements.
- Fundraising expenses.
- Website set-up, design, and maintenance costs.

If you are unclear as to whether something constitutes an expenditure, contact the municipal clerk's office.

**Biennial Re-Registration.** All registered municipal political action committees must file an updated registration form every election (even-numbered) year, between January 1 and March 1. This biennial registration applies even if there has been no change to the information provided on the previous registration.

## **Duties of the Treasurer**

Before registering with the municipal clerk, every PAC and BQC is required to appoint a treasurer. The treasurer has specific duties under election law including keeping detailed records of all campaign contributions and expenditures, and completing and filing campaign finance reports on time. The treasurer, along with the PAC or BQC, is liable for violations of campaign finance laws and subject to any resulting penalty imposed by the Commission. The treasurer's name and contact information must be listed on the registration form. If the PAC or BQC changes treasurers, the municipal clerk must be notified within 10 days of the change. Neither the treasurer nor the principal officers have to reside or be registered voters in Maine.

**Record Retention for PACs and BQCs.** The treasurer is required to retain all receipts of expenditures made in support or in opposition to a campaign in this State for a minimum of 4 years. Records that are required to be retained are:

- A detailed account of all expenditures made to support or oppose a candidate, committee or ballot question, including:
  - The name and address of each candidate or committee.
  - The office sought by the candidate and district the candidate seeks to represent.
  - The title or question number of each ballot question, initiated petition or referendum.
  - The date of expenditure.
- Vendor invoices or receipts in excess of \$50 or more, which must identify the particular good or service purchased. Receipts may be



in the form of cancelled checks.

- A record of all contributions from contributors who gave in excess of \$50 for PACs and in excess of \$100 for BQCs. When any donor's contributions exceed \$50 for a PAC or \$100 for a BQC, the record must include the aggregate amount of all contributions from that donor, and:
  - The name and mailing address of that contributor.
  - The amount given.
  - The date of the contribution.

The committee is not required to submit bills or invoices to the Commission unless they are requested. The Commission may request bills or invoices to verify the accuracy of reports.

### **County-wide Referenda**

When a PAC or BQC is formed solely to support or oppose county candidates, referenda, or ballot questions in the county, it is subject to the same requirements and responsibilities as PACs and BQCs involved in state-wide elections. These PACs and BQCs register and report with the Commission.

### **Terminating a PAC or BQC**

Whenever a PAC or BQC determines that it will no longer accept any contributions or make any expenditures, the committee can file a final campaign finance report and a termination statement. The final report must cover the period from the close of the last reporting period to the date of termination. Prior to terminating, the PAC or BQC must dispose of any surplus cash and report how the funds were disposed of

in the final report. There are no restrictions on how a PAC or BQC can dispose of funds prior to termination. The committee can do this by making contributions to other PACs, BQCs, party committees, candidates, non-profits or by making a general treasury transfer, if appropriate. The committee must also report any loans, debts, or other obligations that are unpaid and outstanding at the time of the committee's termination. Until the termination statement is filed, the committee must continue to file campaign finance reports.

### **Out-of-State PACs.**

A PAC that is organized outside of the state may be subject to the same requirements as a PAC or BQC organized under Maine law if it becomes involved in Maine elections. If an out-of-state PAC meets the qualifications for being a PAC or BQC under Maine law, it is subject to the same registration and reporting requirements as a PAC or BQC organized in-state. Please refer to the definitions of PACs and BQCs in the first section of this chapter.

An out-of-state PAC is not required to register and file reports with the Commission or municipality if the PAC's only financial activity in the state is making contributions to other PACs, BQCs, party committees, or candidates registered with the Commission or municipality and the PAC has not raised or accepted any contributions to influence an election or campaign in Maine.

An out-of-state PAC that receives more than the threshold amount of contributions or makes more than the threshold amount of expenditures for the purpose of influencing an election in Maine, including the col-



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lection of signatures for a direct initiative or referendum, will have to register and file reports as a Maine PAC or BQC.

### **Constitutional Officers and State Auditor**

Constitutional officers (the Secretary of State, the State Treasurer and the Attorney General), the State Auditor or any individual running for these offices may not form a political action committee or be involved in decision making for or solicit contributions to a political action committee.

Constitutional officers are also prohibited from directly or indirectly soliciting or accepting contributions from lobbyists or their clients on behalf of a PAC or a ballot question committee while the Legislature is in session (see Chapter 4).

### **Federal Law Prohibits Contributions from Foreign Nationals**

- Foreign nationals are prohibited from making any contributions or expenditures in connection with any election in the U.S.
- “Green card” holders are not considered foreign nationals and may contribute.
- A U.S. subsidiary of a foreign corporation or a

U.S. corporation that is owned by foreign nationals may be subject to the prohibition. For more, go to [www.fec.gov](http://www.fec.gov).

#### LEGAL REFERENCES

Definitions	21-A MRSA §§ 1052 and 1056-B(2-A)
Registration	21-A MRSA § 1053
Treasurers	21-A MRSA § 1054
Record Retention	21-A MRSA § 1057
Municipal Elections	21-A MRSA § 1058-A
PAC Termination	21-A MRSA § 1061
Out-of-State PACs	21-A MRSA §§ 1051 and 1053-B
Ballot Question Committees	21-A MRSA § 1056-B
Constitutional Officers and State Auditor	21-A MRSA § 1063





## Chapter 2

### Filing Campaign Finance Reports

#### How and When to File Reports

All registered municipal political action committees and ballot question committees are required to file reports with the clerk in the municipality in which they are operating. Copies of paper reports are available at the municipal clerk's office and on the Commission's website, [www.maine.gov/ethics/forms](http://www.maine.gov/ethics/forms). All completed reports should be submitted by the filing deadline to the appropriate municipal clerk. Please contact the clerk's office for specific instructions on how and when reports should be submitted.

*Filing Schedules.* Once registered with the municipality, a PAC or BQC will need to file periodic campaign finance reports until the committee is terminated, even if the committee had no financial or campaign-related activity during the reporting period. The number of reports that a PAC or BQC has to file and the filing schedule varies depending on the committee's involvement in campaign-related activities. In even-numbered years when a general election is held, all PACs and BQCs will have to file at least seven campaign finance reports. In odd numbered years, all PACs and BQCs will have to file quarterly reports but will only have to file pre-election and post-election reports if they become involved in a campaign. See below for more information about odd year reporting.

At the beginning of each year, the Commission will publish the filing schedule for that year on its website.

Copies of the filing schedule will also be available at the municipal clerk's office. Committees should regularly review the schedule to determine what reports it will need to file and to ensure that reports are filed on time.

All regularly-scheduled campaign finance reports must be received by the municipal clerk by the close of business on the day of the deadline. If a reporting deadline falls on a weekend or holiday, the report is due on the next business day. (This is different for Independent Expenditure reports and 24-Hour reports. See below for information on 24-Hour Reports and see Chapter 4 for information on Independent Expenditure Reports) Because not all municipal offices hold the same business hours, please confirm office hours and filing deadlines with the office with which you registered.

PACs and BQCs that do not submit a required report by the filing deadline may be assessed a civil penalty.

#### Campaign Finance Reports

*Quarterly Reports.* All PACs and BQCs must file quarterly reports every year, even if the PAC or BQC had no financial activity during the reporting period. The filing schedule for these reports is the same from year to year.

*Pre-Election and Post-Election Reports.* In years in which a primary election and general election are held (even-numbered years), there are 4 pre-election and



**QUARTERLY REPORT FILING SCHEDULE FOR MUNICIPAL  
POLITICAL ACTION COMMITTEES & BALLOT QUESTION COMMITTEES**

Type of Report	Deadline	Reporting Period
April Quarterly	April 10	January 1 — March 31
July Quarterly	July 15	April 1 — June 30
October Quarterly	October 5	July 1 — September 30
January Quarterly	January 15 (of the following year)	October 1 — December 31

post-election reports in addition to quarterly reports that all PACs and BQCs must file, even if they are not actively participating in the elections. These reports are due 11 days before an election and 42 days after an election.

In odd-numbered years there may be a special candidate election (to fill a vacancy) or a ballot question election. Only committees that make expenditures to influence a special candidate election or ballot question election will have to file pre-and post-election reports for that election.

**24-Hour Reports.** Beginning the 13th day before an election and ending the day before an election, com-

mittees must report any single expenditure of \$500 or more within 24 hours of making the expenditure, including weekends and holidays. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligation is made, even if the payment has not been made. (See Chapter 1 for more information on expenditures) The purpose of these reports is to provide disclosure of campaign activity in the period directly before an election.

Any expenditures reported in a 24-hour report must also be reported on the next regularly scheduled campaign finance report.

**PRE- AND POST-ELECTION CAMPAIGN FINANCE REPORTS: DEADLINES AND REPORTING PERIODS  
FOR MUNICIPAL POLITICAL ACTION COMMITTEES & BALLOT QUESTION COMMITTEES**

Report Name	Deadline	Reporting Period
11-Day Pre-Election Report	The 11 <sup>th</sup> day before the date of the election	End of the last reporting period through the 14 <sup>th</sup> day before the election
42-Day Post-Election Report	The 42 <sup>nd</sup> day after the date of the election	End of the last reporting period through the 35 <sup>th</sup> day after the election
24 Hour Report	Within 24 hours, including weekends and holidays, of making an expenditure of \$500 or more	Begins on the 13th day before the election through the day before the election





As with pre-election and post-election reports, 24-hour reporting periods will be listed on the filing schedule.

**How to file 24-Hour Reports:**

File in person or by fax.

**When to file 24-Hour Reports:**

Within 24 hours of the expenditure being made.

A report must be filed on a weekend or holiday if that is when it is due – you cannot wait until the next business day.

Reports must be filed by fax if it is due on a weekend or holiday.

Expenditures made on the day before an election must be reported on election day.

**Amendments**

If the committee unintentionally makes an omission in a campaign finance report or includes incomplete or inaccurate information, it must promptly file an amendment to that report. All amended reports are reviewed by the municipal clerk's staff.

**Review of Reports**

The municipal clerk's staff reviews all campaign finance reports for completeness and compliance with Election Law. The clerk's staff may contact the committee if it believes that a report is incomplete or requires additional information. If the clerk determines that a report does not substantially conform to the disclosure requirements, the clerk may consider the report late, even if it was filed on time.

**Reporting Reminders**

PACs and BQCs are responsible for knowing their reporting obligations and the due dates for reports. While some municipal clerks send out reminders before filing deadlines, PACs and BQCs are ultimately responsible for making sure reports are filed on time.

**Penalties for Late Filed Campaign Finance Reports and Failure to File Reports**

Penalties are assessed for late campaign finance reports using a formula established by statute. The formula takes into account the number of days the report was filed late, any previous violations by the committee during the election cycle, and the amount of financial activity that took place during the reporting period. The table below illustrates how late filing penalties are calculated. The election cycle is a two year period beginning on January 1 of each even-numbered year.

The maximum penalty that can be assessed against a PAC or BQC for a late-filed quarterly, pre-election or post-election report or a late-filed 24-hour report is \$10,000 or, if the amount of the financial activity reported late exceeds \$50,000, one-fifth of the amount reported late.

A person who fails to file a required report within 30 days of the filing deadline may also be charged with a Class E crime.

The municipal clerk may waive a penalty if there are mitigating circumstances such as a valid emergency, an error by the municipal clerk's staff, or any other circumstances that the municipal clerk determines warrant mitigation of a penalty. Other factors the municipal clerk may consider are the level of experience of the committee officers and treasurer or harm suffered by the public from the late disclosure. A penalty of less than \$10 is automatically waived, however the violation will count toward the calculation of the penalty rate in the future. If a committee files a late no-activity report, a penalty of no more than \$100 may be assessed.





**Example:** The treasurer files the report two (2) calendar days late. The committee has not had any previous late filings in the past two years. The committee reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater of the amount of total contributions received or expenditures made during the filing period.
X .01	Percent prescribed for first violation
\$25.00	One percent of total contributions
X 2	Number of calendar days late
<b>\$50.00</b>	Maximum penalty the Commission may assess

### **Notification of Late Filing and Failure to File**

If the municipal clerk decides not to waive the late filing and to have a penalty assessed, the matter is referred to the Commission. The municipal clerk will send a notice by certified mail to the treasurer within 3 business days of the deadline informing the treasurer that the report was not received or was filed late. In the case of the late filed report, the letter will also provide notice of the preliminary amount of the penalty. When a treasurer receives notice that a penalty will be assessed for filing a report late, the committee has 14 days from receipt of the clerk's certified letter to request a waiver of the penalty due to mitigating circumstances or other reasons. To request a waiver, the committee's treasurer, principal officer, or representative must submit a statement of the mitigating circumstances to the Commission for consideration. The request for a waiver will be placed on the Commission's agenda and decided at a public meeting of the Commission. Although not required, the committee's treasurer or representative is encouraged to attend the Commission meeting. After the Commission

meets, notice of its final determination and the penalty imposed, if any, will be sent to the principal officer and the treasurer of the committee.

If the committee does not request a determination by the Commission within the 14 day period, the Commission staff will send a final notice of the penalty to the principal officer and the treasurer.

Unless a waiver is requested, the penalty must be paid in full within 30 days unless payment arrangements are made. If the penalty is not paid within 30 days, the Commission may refer the matter to the Attorney General's office for collection in a Civil action.

### **Appealing a Penalty**

A committee may appeal the Commission's final determination by filing a petition for review with the Superior Court within 30 days of receiving the notice of the final determination. The Maine Administrative Procedures Act (5 M.R.S.A § 11001 *et seq.*) and Rule 80C of the Maine Rules of Civil Procedure govern the process for an appeal to the Superior Court.



LEGAL REFERENCES

Electronic Filing	21-A MRSA § 1059(5)
Filing Dates	21-A MRSA § 1059
24-Hour Reporting Requirement	21-A MRSA § 1059(2)(E)
Penalties	21-A MRSA § 1062-A
Penalty Waivers	21-A MRSA § 1062-A(2)
Appealing Penalties	21-A MRSA §§ 1062-A(5)





## Chapter 3

### Schedule-by-Schedule Guide to Campaign Finance Reports

Each campaign finance report covers a specific period of time. You need to report all contributions received and all expenditures made by the committee during the specified report period. There are seven different schedules in a campaign finance report. This overview will give you a summary of the information required to be included in each schedule.

#### Schedule A: Cash Contributions Received by the Committee

- For contributions from a single source aggregating more than \$50 for PACs and more than \$100 for BQCs, the committee must report the date and amount of the contribution, the name and mailing address of the contributor, and the contributor's occupation and employer if the contributor is an individual. If after a reasonable effort you are unable to obtain the contributor's occupation and employer information, please enter "information requested" on the campaign finance report. The municipal staff may ask the committee to make additional efforts to obtain occupation and employer information.
- Cash contributions from a single donor aggregating \$50 or less for PACs or \$100 or less for BQCs during a reporting period do not have to be itemized and can be reported as a lump sum.

- Non-major purpose PACs (*i.e.*, organizations that have a major purpose other than influencing elections but which spend more than \$5,000 in a calendar year on candidate elections) and BQCs only have to report those contributions made to the organization for the purpose of influencing the nomination or election of a candidate or ballot question and all general treasury funds transferred to the PAC or BQC or used to support the PAC or BQC.

#### Who may contribute to a PAC?

Maine Election Law does not place any restrictions on who may contribute to a PAC.

The only exception is that, during a legislative session, lobbyists and their clients may not contribute to a PAC in which certain governmental officials are involved.

#### Are there any limits on contributions to a PAC?

No. Maine law does not place any limit on the amount of a contribution to a PAC.

#### Schedule A-1: In-Kind Contributions

- For in-kind contributions of goods or services from a single source aggregating more than \$50 for PACs and more than \$100 for BQCs—based on fair market value—the committee must report the contributor's name, address occupation and employer, for individuals, a description of the goods or services contributed, the fair market value, and date of the contribution. If another organization, such as an



other PAC or BQC, party committee, or other type of organization or business makes an in-kind contribution in the form of paid staff time, the recipient PAC or BQC should include a description of those staff activities and the number of hours of staff time that were contributed. Contributed staff time and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

**Schedule B: Expenditures to Support or Oppose and Contributions to Candidates and Committees**

- All cash contributions that the committee makes to candidates, party committees, political action committees, and ballot question committees must be reported on Schedule B.
- All in-kind contributions of goods, services, materials and supplies given by your committee to candidates, party committees, other political action committees or ballot question committees must be reported on Schedule B, regardless of the amount.
- Expenditures made for the purpose of influencing a candidate or ballot question election (e.g., campaign ads, phone banks, etc.) must be included on Schedule B. This includes expenditures to support or oppose candidates regardless of whether they contain express advocacy or are “issue” ads. If a single expenditure is made on a communication that pertains to multiple candidates or ballot questions, the committee must itemize the amount

spent per candidate or ballot question. The name of the candidate, committee or ballot question supported or opposed must also be reported for every expenditure as well as whether the expenditure was made to support or oppose the candidate or ballot question.

All expenditures made by a committee to get a proposed initiative or referendum on the ballot, or to prevent a proposed referendum or initiative from getting on the ballot, including expenditures to collect signatures, must be reported on Schedule B.

*Tip:* Make sure to include Independent Expenditures made during the reporting period on Schedule B.

- Election Law requires that the date, amount, payee, and the purpose of the expenditure be reported. The “payee” refers to the vendor that provided the goods and services. Please do not report “cash,” or “disbursement” as the payee. If you reimburse someone for an expenditure, report the name of the vendor as the payee and in the remark section report who was reimbursed. To report the purpose of the expenditure, you must select an expenditure type (see the table on the next page) for each expenditure. BQCs and non-major purpose PACs only have to report those expenditures made for the purpose of initiating or influencing a ballot question or the nomination or election of a candidate. If a remark is required, please give as much information describing the expenditure as possible. For instance, if you report an expenditure for profes-



EXPENDITURE TYPES			
<b>CON</b>	Contribution to candidate, party or committee	<b>POL</b>	Polling and survey research
<b>CNS</b>	Campaign consultants	<b>POS</b>	Postage for U.S. Mail and mail box fees
<b>EQP</b>	Equipment (office machines, furniture, cell phones)	<b>PRO</b>	Professional services
<b>FND</b>	Fundraising events	<b>PRT</b>	Print media ads only (newspapers, magazines, etc.)
<b>FOD</b>	Food for campaign events, volunteers	<b>RAD</b>	Radio ads, production costs
<b>LIT</b>	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)	<b>SAL</b>	Campaign workers' salaries and personnel costs
<b>MHS</b>	Mail house (all services purchased)	<b>TRV</b>	Travel (fuel, mileage, lodging, etc.)
<b>OFF</b>	Office rent, utilities, phone and internet services, supplies	<b>TVN</b>	TV or cable ads, production costs
<b>OTH</b>	Other	<b>WEB</b>	Website design, registration, hosting, maintenance, etc.)
<b>PHO</b>	Phone banks, automated telephone calls		
<i>Only these expenditure types require a remark: CNS, OTH, PRO and SAL.</i>			

sional services, list the specific type of service performed in the remarks section.

### **Schedule B-1: Operating Expenditures (PACs only, BQCs do not have a Schedule B-1)**

All operational expenses and other cash expenditures not reported on Schedule B, no matter how small, must be reported on Schedule B-1. Make sure to include expenditures on committee staff salaries, office rent, postage (for non-candidate communications), website design and maintenance, etc.

*Note:* Because BQCs only have to report expenditures that support or oppose ballot questions, they do not have to report on Schedule B-1.

### **Schedule C: Loans & Loan Repayments**

The committee must report all loans from commercial or noncommercial sources, as well as loan repayments and forgiven amounts.

### **Schedule D: Total Unpaid Obligations (other than loans)**

All unpaid debts and obligations for goods and services must be disclosed on Schedule D in each report until full payment is made to the vendor. If an order

has been placed for goods and services but the exact amount is not known, the committee should obtain an estimate from the vendor for reporting purposes. When a payment is made on an unpaid debt, it is reported on Schedule B or B-1.

### **Schedule E:**

There is no schedule E for PACs and BQCs.

### **Schedule F: Summary**

Summary of all schedules for the reporting period and year-to-date totals for the calendar year. Please make sure the totals on the summary schedule match both the individual schedule totals and the committee's independent records.

### **Expenditures Made by a Consultant**

If a PAC or BQC hires a consultant or consulting firm to assist the committee, and the consultant makes expenditures on behalf of the committee, those expenditures must be reported as though the committee made them directly. The reporting—generally on Schedule B—must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and the



amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the consultant if the consultant used the fee to pay others for campaign-related goods or services. If the committee reported a lump sum payment to a consultant in a previously filed report, the committee may need to amend that report to deduct from that amount any expenditures made by the consultant, so that the expenditures are not double-reported. The Commission also recommends that the committee note in the remarks section for the expenditure that the payment was made by the consultant (see the example below).

The committee's treasurer should also obtain receipts or invoices from the consultant for the goods and services purchased by the consultant from sub-vendors.

### **Reporting Interest Earned on Bank Accounts**

Report any interest earned on the committee's bank accounts on Schedule F under "Other Cash Receipts."

### **Investigations and Audits**

The Commission is authorized to undertake investigations or audits of the financial reporting of political action committees or ballot question committees. The Commission may initiate an investigation on its own

or in response to a request submitted to the Commission by a municipal clerk or a member of the public. Any person may make a request for an investigation. The request must be in writing, signed by the person making the request, and must set forth facts in sufficient detail to specify the alleged violation. The statements made in the request must be based on the personal knowledge of the person making the request. If not, the identity of the source of the information must be explained in the request. The Commission will review the request to determine whether the allegations set forth sufficient grounds for believing that a violation may have occurred and to determine whether an investigation should be initiated.

REPORTING PAYMENTS MADE TO CONSULTANTS AND BY CONSULTANTS				
SCHEDULE B (or B-1) – EXPENDITURES				
DATE EXPENDITURE MADE	PAYEE	EXPENDITURE TYPE	REMARK	AMOUNT
5/10/2009	ELECTION ASSOCIATES	CNS	CONSULTING SERVICES FOR PALMCARD MESSAGE; TOTAL PD TO ELECTION ASSOC. - \$1,150	\$150
5/28/2009	GRAPHICS CENTER	PRT	PAID BY ELECTION ASSOC. ON BEHALF OF COMMITTEE	\$1,000



LEGAL REFERENCES

Contributions Received by the Committee	21-A MRSA § 1060(6)
Expenditures to Support or Oppose	21-A MRSA § 1060(4)
Operating Expenditures	21-A MRSA § 1060(7)
Expenditure Made by a Consultant	Rules, Chapter 1, §7(1)
Audits and Investigations	21-A MRSA § 1003; Rules, Chapter 1, §4(2)







## Chapter 4

### Supporting Candidates and Ballot Measures and Making Independent Expenditures

#### Making Contributions

With the exception of contributions to legislative candidates participating in the Maine Clean Election Act program, there are no restrictions in Election Law on the types of entities to which a political action committee or ballot question committee may contribute. PACs and BQCs can contribute to traditionally financed candidates, other PACs and BQCs, state and local party committees, and other organizations and groups. These contributions can be in cash or in-kind.

There is a limit on the amount a PAC, BQC or other person may contribute to traditionally financed candidates. Pursuant to 21-A M.R.S.A. § 1015(2), the contribution limits per election (the primary and general elections are separate elections) are as follows:

Contributions to:	Limits per election
Privately Financed Candidates for the Legislature	\$375
Privately Financed Candidates for Governor	\$1,500
County Offices and Municipal Candidates	\$750
Party Committees	Unlimited
Political Action Committees	Unlimited
Ballot Question Committees	Unlimited

Because candidates who are not enrolled in a political party do not have primary elections, they are only eligible to receive contributions for the general election.

#### In-Kind Contributions

A political action committee can provide goods and services (anything of value) to a candidate. However, if the candidate does not reimburse the committee for the full value of the goods and services, the committee makes an in-kind contribution to the candidate. The amount of the contribution is the value of the goods and services minus any payment the candidate has made to the committee. In-kind contributions are subject to the contribution limits for traditionally financed candidates. MCEA candidates cannot accept any cash or in-kind contributions from any source.

#### Selling Services to a Candidate

If your group or organization sells a service, space or anything of value to a candidate, you should provide them with an invoice. For instance, if your group provides multiple candidates with “Vote” bumper stickers that they will pay for, break down the cost per candidate and provide the candidates with an invoice.

#### Independent Expenditures

*Note:* Independent expenditures are applicable only to communications related to candidates, and do not affect communications about ballot questions. The



Commission's guidance on Independent Expenditures is provided in Appendix A.

*What Is an Independent Expenditure?* An independent expenditure is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate;

*Note:* Municipal PACs that wish to make independent expenditures on behalf of legislative or county candidates should contact the Ethics Commission staff as this may change their status and require registration with the Commission.

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in "cooperation, consultation or in concert with" a candidate is considered to be a contribution to the candidate (subject to contribution limits) and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks for and obtains a campaign photograph from the candidate or the candidate's campaign manager, that is enough to make the entire cost of the ad a contribution to the candidate. The cost would have to be reported by the candidate as a contribution, and the supporter would not be required to file an independent expenditure report. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

**What is an expenditure?**

- any obligation to pay for a good or service
- the placement of an order for goods and services
- a promise or agreement (even an implied one) that payment will be made
- the signing of a contract for a good or service
- the delivery of a good or service even if payment has not been made
- the payment for a good or service

**When is an expenditure made?**

The earliest of the following events:

- the placement of an order for a good or service
- the signing of a contract for a good or service
- the delivery of a good or service
- a promise or an agreement to pay
- the making of a payment for a good or service

*What does "cooperation, consultation or in concert with mean?"* "Cooperation, consultation or in concert with" includes, but is not limited to:

- Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, or
- Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when,



- The expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;
- When the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or
- The communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditures to promote or support that candidate, or oppose or defeat the candidate's opponent, the request does not constitute cooperation or coordination.

An expenditure will not be presumed to have been made in cooperation, consultation or in concert with, or request or suggestion of a candidate, solely because:

- The spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a

publically available source;

- The person making the expenditure has previously provided advise to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
- The person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;
- The spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;
- The expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and families thereof; or
- The expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

*Communications That Contain Express Advocacy.* "Expressly advocate" means that a communication uses phrases such as "vote for the Governor," "reelect



your Representative,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for Senate District 1,” “Jones for House of Representatives,” “Jean Smith in 2012,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as pro-life or pro-choice, “vote against Old Woody,” “defeat” accompanied by a picture of one or more candidates, “reject the incumbent,” or communications of campaign slogans or individual words, which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc. which say “Pick Berry!”

A communication also express advocacy if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

**Exclusions.** An independent expenditure does not include:

- An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of,

**“Clearly identified” means:**

- The name of the candidate appears or
- A photograph or drawing of the candidate appears or
- The candidate’s identity is apparent by unambiguous reference.

polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

- A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- A voter guide that consists primarily of candidates’ responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

**When To File an Independent Expenditure Report.** Please consult the Independent Expenditure filing schedule at the end of this chapter.

**Filing Independent Expenditure Reports.** Independent expenditure reports should be filed with the municipal clerk in the municipality in which the PAC is operating. If the deadline for an independent expenditure report falls on a weekend or holiday, you must file the report on that day. You cannot wait until the next business day. You may fax the report by the deadline, provided that the clerk receives the original report within five days thereafter. Please note that the independent expenditure report must contain a notarized statement that the expenditure was made independently of the candidate.

Any expenditure reported in an independent expenditure report must also be reported in the committee’s regular campaign finance report for the reporting period in which the expenditure was made.

**Late Independent Expenditure Reports.** If a committee files an independent expenditure report late or fails to file a report, the maximum penalty that may be imposed is \$5,000 except if the financial activity re-



## *Municipal PAC & BQC Guidebook*

ported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late. Failure to file an independent expenditure report after proper notice has been given by the Commission is a Class E crime.

### **WHEN DO INDEPENDENT EXPENDITURES HAVE TO BE REPORTED?**

It is important to note that it is the total or aggregate amount spent per candidate for the election that matters in determining whether an independent expenditure has to be reported, not simply the amount of a single expenditure. When an independent expenditure report has to be filed depends on the amount and the timing of the expenditure. The table below shows the reporting periods and the applicable thresholds and deadlines for reporting expenditures.

REPORTING PERIOD	THRESHOLD FOR REPORTING EXPENDITURE	REPORT AND DUE DATE
Anytime on or before the 61st day before an election	Expenditures over \$100 per candidate	60-Day Pre-Election Report due by 5:00 p.m. 60 days prior to the election.
60th day through the 14th day before the election.	Expenditures over \$100 per candidate but not over \$250	11-Day Pre-Election Report due by 5:00 p.m. the 13th day prior.
60th day through the 14th day before the election.	Expenditures over \$250 per candidate	Within 2 calendar days of making the expenditure
13th day through the day before the election.	Expenditures over \$100 per candidate	Within 1 calendar day of making the expenditure

### LEGAL REFERENCES

Independent Expenditures	21-A MRSA § 1019-B; Rules, Chapter 1, § 10
Contributions Limits	21-A MRSA § 1015(2)
Contributions During the Legislative Session	1 MRSA § 1015; Rules, Chapter 1, § 12
Membership Communications	21-A MRSA § 1019-A; Rules, Chapter 1, § 13





## Chapter 5

### Signs and Other Communications

#### Campaign Communications

Political action committees will often use campaign ads to support or oppose candidates. Anytime a committee makes an expenditure for a communication that expressly advocates for the election or defeat of a candidate, the communication must clearly and conspicuously state the name and address of the committee that paid for or financed the communication. This requirement also applies to any communication that names or depicts a clearly identified candidate and that is distributed to voters during the 21 days before the primary election or the 35 days before the general election, even if it does not contain express advocacy. This includes communications made through broadcasting stations, cable television systems, newspapers, magazines, outdoor advertising facilities (including yard signs), websites, direct mails, and other types of political advertising or through flyers, handbills, bumper stickers, and other non-periodical publications. If the communication has been authorized by the candidate, the disclosure statement on the communication must also state that the candidate authorized the communication.

*Note:* For a definition of “express advocacy” and “clearly identified” see Chapter 4.

If the communication has not been authorized by a candidate, a candidate’s authorized political committee or the candidate’s agents, the communication

must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, it must contain at the bottom in 12-point bold print, Times New Roman Font the words “**NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE.**” If a committee has made an independent expenditure for a communica-

Paid for by the Smallville People's PAC  
2 Twin Street, Augusta, ME  
**NOT PAID FOR OR AUTHORIZED BY ANY  
CANDIDATE**

tion regarding a candidate, it must have this disclosure statement.

Maine Election Law does not require that a disclosure statement be included on communications made to support or oppose a ballot question. In the interest of transparency and disclosure, the Commission encourages committees to include a disclosure statement similar to the one required for candidate elections on materials intended to influence the outcome of a ballot question, but it is not required by any Maine statute or rule. However, the Federal Communications Commission does require that a sponsorship identification be included on political advertisements on broadcast stations or cable television systems. For more information on federal sponsorship identification regula-





tions, contact the FCC at the number listed at the end of this guidebook.

### **Automated Telephone Calls**

Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate that are made 21 days before a primary election or 35 days before a general election must clearly state the name of the person who paid for or financed the communication. The disclosure is not required for calls paid for by the candidate using the candidate's voice and that are made in support of the candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

### **Communications Exempt from Disclosure**

*Ballot Question Communications.* Communications made to support or oppose ballot question elections are not required to contain disclosure statements.

*Signs That Are Lettered or Printed by Hand.* A sign that is lettered or printed individually by hand, that has been paid for and authorized by the candidate (or a candidate's committee or agent), and that clearly identifies the name of the candidate is not required to have a disclosure statement.

*Small Items.* Certain items are exempt from the disclosure requirement because of their small size: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, and tickets to fundraisers.

A disclosure statement is also not required on advertisements in electronic media where including the disclosure statement would be impracticable due to size or character limitations.

The Commission may exempt similar items if it determines those items are too small and it would be unnecessary to include the required disclosure.

*Low-cost Items.* Certain types of campaign communications are not required to include the disclosure statement. This exemption is only for handbills and other literature, campaign signs, and internet and e-mail activities. The exemption applies if: (1) the total cost to produce and distribute them is \$100 or less; and (2) they were prepared and paid for by one or more individuals who:

- are not required to register with the Commission, and
- are acting independently of and without the authorization of the candidate, candidate's committee, a party committee, political action committee, a ballot question committee or their agents.

### **Placement of Political Signs**

The Department of Transportation regulates the placement of political posters and signs. Under the provisions of 23 M.R.S.A. § 1913-A and the Department's regulations:

- Political posters and signs may be erected on private property outside the right of way limits of public ways at any time prior to an election, primary or referendum, limited in size to a maximum of 50 square feet.



- Political posters and signs may be erected within the right of way limits of public ways no sooner than six weeks prior to an election and must be removed no later than one week following the date of the election.
- Political posters and signs shall not be erected or maintained on any traffic control signs or devices, public utility poles or fixtures, upon any trees or painted or drawn upon rocks or other natural features.
- No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an **imitation of or resembles an official traffic-control device**, such as a stop sign.
- Political signs may be displayed in view to all public ways **except** for the Interstate highway system. Under Federal and State law, **signs may not be placed within the limits of any controlled access highway nor erected within 660 feet of the nearest edge of the Interstate highway system in such a manner that the message may be read from the Interstate highway.** All signs located at Interstate interchanges are in violation and will be removed.

**Municipal ordinances advocating stricter control take precedence over state law.**

Traffic safety should be of the utmost consideration in placement of political signs. Campaign workers should take great care not to place signs or posters where they could create a traffic hazard. For example, signs or posters should not be placed at or near intersections where they could obstruct the view of on-coming traffic to the motorist entering the intersection. Also, signs or posters should not be erected on or in any manner so as to interfere with the effectiveness of traffic control devices.

Acceptable display would be those posters or signs affixed to their own stake or post and set in the ground well outside the traveled portion of the highway, or, with the owner's consent and permission, attached to a building or dwelling, or displayed on vehicles or in the windows of business establishments, and in other like manner.

Most "violations" are the result of the efforts of ardent campaign workers who do not know the law. It is therefore suggested that this information be passed on to them.

**Maine Department of Transportation Maintenance employees will have instructions to remove all improperly placed or maintained political posters and signs.**

Please help the Department of Transportation to prevent an unsightly, indiscriminate and uncontrolled display of election campaign posters throughout the State and to prevent any possible embarrassment to candidates. Please direct all questions about the placement of political signs to the Right of Way Maintenance Control division at (207) 624-3611. The division's website is [www.maine.gov/mdot/traffic-counts/public-signs.php.htm](http://www.maine.gov/mdot/traffic-counts/public-signs.php.htm)



LEGAL REFERENCES

Campaign Communications	21-A MRSA §§ 1055; 1014
Automated Telephone Calls	21-A MRSA § 1014(5)
Enforcement	21-A MRSA § 1014(4)
Placement of Political Signs	23 MRSA § 1913(A)



## Chapter 6

### Other Terms and Definitions

**Association:** “Association” means a group of two or more persons, who are not all members of the same immediate family, acting in concert.

**Candidate:** “Candidate” means any person who has filed a petition under either sections 335 and 336 or sections 354 and 355 and has qualified as a candidate by either procedure, or any person who has received contributions or made expenditures or has given his consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate.

**Date of Contribution:** “Date of Contribution” is the date it is received by a candidate, an agent of the candidate, a candidate’s committee, a party committee and its agents, or a political action committee and its agents.

**Form of Organization:** The form or structure of an organization, including cooperatives, corporations, voluntary associations, partnerships or any other structure by which the committee functions. If a PAC or BQC is not a formal organization such as a non-profit, partnership, corporation or LLC then list the form of the organization as voluntary association. The date of origin is the incorporation or inception date if a voluntary association.

**Influence:** “Influence” means to promote, support, oppose or defeat.

**Initiate:** “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

**Person:** “Person” means an individual, committee, firm, partnership, corporation, association or organization.

**Political Committee:** “Political Committee” means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.

**Statement of Support or Opposition.** A statement indicating the positions of the committee, support or opposition with respect to a candidate, political committee, or campaign.





## Chapter 7

### Common Registration and Reporting Mistakes

- Registration must be complete. This includes having a form of organization, support/oppose question completed and complete contact information for treasurer and officers.
- An initial finance report must accompany the initial registration. If the PAC/BQC has not had any financial activity the cover page for the finance report must be completed. Check the boxes indicating that it is the initial report and that it is a non-activity report.
- Too many contributions missing occupation and employer on contributions over \$50 for PACs and \$100 for BQCs: Have an internal system set up to capture the information as the contributions come in.
- Schedule B and B-1 expenditures reported incorrectly: Schedule B is for any expenditure directly related to supporting or opposing a candidate, committee or issue. This includes cash contributions, literature, campaign consultants, staff time directly related to supporting/opposing a candidate or issue, etc. Schedule B-1 is for routine operating expenditures, e.g., rent, fundraising expenses, administrative staff salaries. BQCs do not have a Schedule B-1. All BQC expenditures must be reported on Schedule B.
- When reimbursing someone for an expenditure they are not the “payee.” The payee is the vendor who provided the goods or services and who actually received the payment. In the remark section, you would state that it was a reimbursement. *For example, John Smith purchases stamps for XYZ PAC. The payee on the Schedule B/B-1 would be the Post Office not John Smith. The expenditure code would be POS for postage and in the remark section you would write “reimbursed John Smith for stamps.”*
- If an expenditure is reported as unpaid debt and is paid in part or not at all for the next reporting period, the remaining unpaid debt needs to be re-entered in the next report.
- Independent expenditures and 24-hour reports are different and cannot be used to substitute for each other. Independent expenditures must be reported on paper and filed with the Commission. 24-hour reports are filed online. See the guidebook section on independent expenditures. Both need to be reported on the next regularly scheduled campaign finance report.
- If your PAC or BQC makes an in-kind contribution to another PAC or BQC in respect to a ballot question, you must report the expenditure to the vendor with the proper expenditure code on Schedule B and in the remarks section say the expenditure was an in-kind contribution to the other PAC or BQC. The receiving PAC or BQC will report it as an in-kind contribution and describe what they received from your PAC or



BQC that was of value.

- If making payments on a loan be sure to report that on Schedule C for loans. If a loan is forgiven, it needs to be reported as a contribution from whoever the money originally came from.
- In even years (election years), all PACs and BQCs file all 8 reports regardless of whether the committee is active in the elections.
- Contact the municipal clerk if it is necessary to make any changes to the committee's registration information, especially if the treasurer is changed.
- You need to report expenditures for 24-hour reports, independent expenditures and unpaid debt when any of the following events occurs: the placement of an order for a good or service, the signing of a contract for a good or service, the delivery of a good or service, a promise made to pay for a good or service, or the payment for a good or service.



## Directory

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### **Commission on Governmental Ethics and Election Practices**

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Hours: 8:00 a.m. – 5:00 p.m.  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Electronic Filing: [www.maine campaign finance.com/public/home.asp](http://www.maine campaign finance.com/public/home.asp)

### **Department of the Secretary of State, Division of Elections**

Office: 111 Sewall St., Cross Office Building, 4<sup>th</sup> Floor, Augusta  
Mail: 101 State House Station  
Augusta, Maine 04333-0101  
Phone: (207) 624-7650  
Fax: (207) 287-6545  
Hours: 8:00 a.m. – 5:00 p.m.  
Website: [www.maine.gov/sos](http://www.maine.gov/sos)

### **Department of Transportation, Right of Way Maintenance Control Section**

Mail: 16 State House Station  
Augusta, Maine 04333-0016  
Phone: (207) 624-3611  
Hours: 8:00 a.m. – 5:00 p.m.  
Website: [www.maine.gov/mdot/traffic-counts/public-signs.php](http://www.maine.gov/mdot/traffic-counts/public-signs.php)

### **Federal Elections Commission**

Mail: 999 East Street, N.W.  
Washington, DC 20463  
Phone: (800) 424-9530  
Phone: (202) 219-3670  
Website: [www.fec.gov](http://www.fec.gov)

### **Federal Communications Commission, Office of Political Programming**

Mail: 445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Phone: (888) 225-5322  
Phone: (202) 219-3670  
Website: [www.fcc.gov/mb/policy/political](http://www.fcc.gov/mb/policy/political)  
E-Mail: [campaignlaw@fcc.gov](mailto:campaignlaw@fcc.gov)





**Maine Association of Broadcasters**

Mail: 69 Sewall Street,  
Augusta, Maine 04330  
Phone: (207)623-3870  
800-664-6221  
Website: [www.mab.org](http://www.mab.org)  
E-Mail: [info@mab.org](mailto:info@mab.org)

## MUNICIPAL PAC & BQC GUIDEBOOK



Commission on Governmental Ethics and  
Election Practices

Mailing: 135 State House Station, Augusta, Maine 04333

Location: 45 Memorial Circle, Augusta, Maine

Phone: 207-287-4179

Fax: 207-287-6775

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

E-Filing: [www.mainecampaignfinance.com/public](http://www.mainecampaignfinance.com/public)



## Appendix A

### Independent Expenditure Guidance

#### Advice Regarding Independent Expenditures for the 2012 Elections

*This memo answers some frequently asked questions about whether independent expenditure reporting is required. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures. For advice about how to file an independent expenditure report, please see the instructions on the reporting form.*

#### What is an “independent expenditure?”

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements in print or on television or the Internet, literature, robocalls) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

In addition, payments or obligations made for communications are presumed to be independent expenditures if the communication 1) is disseminated within 21 days before a primary election or within 35 days before the general election, 2) names or depicts a clearly identified candidate, and 3) involves a race in which a Maine Clean Election Act certified candidate is running.

These two periods before an election are referred to below as the “presumption periods.”

Presumption Periods for the 2012 Elections		
Election	Length (includes election day)	Dates
Primary	21 days	May 23 – June 12
General	35 days	October 3 – November 6

Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

#### How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission rules, which is attached to this memo. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.



Since the Commission adopted the rule, the Commission has been asked whether certain communications constitute express advocacy. In order to provide better guidance to organizations making campaign-related expenditures, the Commission has attached to this memo three examples of campaign literature, which are discussed below.

In February 2010, the Commission gave further consideration to some of its prior determinations applying the express advocacy rule. As a result of this review, the Commission decided to clarify that, in a communication to voters, the identification of the office sought by a candidate named in the communication is a factor that the Commission generally will consider in favor of a determination that the meaning of the communication is to urge the election or defeat of a candidate. The determination of whether the communication constitutes express advocacy will be based on the entire content of the communication, and whether the communication has any reasonable meaning other than to urge the election or defeat of a candidate.

The Commission offers the following guidance on the attached three examples of campaign literature

- In the 2008 general election, the Maine Democratic Party mailed the attached literature concerning Peter Kent. Mr. Kent was a candidate for the Maine House of Representatives, but the literature did not mention his candidacy or the election.

This communication was determined not to contain express advocacy.

- In the 2006 general election, the Maine Democratic Party sent the attached literature in support of Anne Rand. In that election, Ms. Rand was a candidate for the Maine House of Representatives, but she was not an incumbent. Nevertheless, the front of the card included the phrase “Anne Rand/State Representative.”
- In the 2008 general election, the Maine Republican Party mailed literature concerning Jane Knapp. Ms. Knapp was a candidate for the House of Representatives, and was not an incumbent. The literature did not mention her candidacy explicitly, but it contained the phrase “Maine Families Deserve a Representative Who Will Fight for Them.”

With respect to the Anne Rand and Jane Knapp literature, the Commission advises that the identification of the office sought by a candidate named in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.

### **How do I report independent expenditures?**

Please see the independent expenditure reporting form for instructions on how to file the report. Under the Commission’s rules, entering into an obligation to make an independent expenditure may require the filing of a report regardless when the payment for the communication is made.

### **Does making an independent expenditure turn me or my organization into a political action committee?**

If an organization spends more than \$5,000 in a calendar year to influence candidate elections, it must register with the Commission as a political action committee, even if its major purpose is something other than the influencing of candidate elections. (21-A M.R.S.A. § 1052(5)(A)(5))

The term “influence” means to promote, support, oppose or defeat. (21-A M.R.S.A. § 1052(4-A))



If your organization's major purpose is to influence candidate or ballot question elections, a lower threshold (\$1,500) for the registration requirement may apply. Please contact the Commission to find out what your registration and reporting requirements are.

This requirement does not apply to individuals.

### **I have heard that I should not coordinate my spending with the candidate I want to support. Why?**

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in consultation or cooperation with a candidate is considered to be a contribution to the candidate and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks for and obtains a campaign photograph from the candidate or the candidate's campaign manager, that is enough to make the entire cost of the ad a contribution to the candidate. The cost would have to be reported by the candidate as a contribution. The supporter would not be required to file an independent expenditure report.

It would be permissible for a traditionally financed legislative candidate to accept a supporter's payment for an ad as an in-kind contribution, but only up to \$350 because that is the contribution limit per election for legislative candidates. The candidate would have to reimburse the supporter for any amount over \$350. For county candidates and some municipal candidates, the contribution limit is \$750 per election. Gubernatorial candidates can accept contributions of up to \$1,500 per election.

Maine Clean Election Act (MCEA) candidates cannot accept any contributions at all. An MCEA candidate would have to pay for the entire cost of the ad.

To find out more about what is considered to be coordination and what is not, please refer to the Commission's rule on coordination which is attached to this memo. You can also contact the Commission staff.

### **What paid communications are covered by the rebuttable presumption?**

The law was designed to apply to written and oral communications intended to influence the nomination, election, or defeat of a candidate. Under the Commission's rules, the following types of communications are covered by the rebuttable presumption:

- Printed advertisements in newspapers and other media
- Television and radio advertisements
- Printed literature
- Recorded telephone messages
- Live scripted telephone calls or messages
- Electronic communications.

This list is not exhaustive and other types of communications may also be covered. In general, any expenditure that has all of the following four elements is covered by the rebuttable presumption:

- an expenditure made to design, produce, or disseminate a communication
- that is disseminated in the last 21 days before a primary election or in the last 35 days before a general election
- that names or depicts a clearly identified candidate, and



- who is in a race involving a Maine Clean Election Act candidate.

If the expenditure is covered by the presumption and is greater than \$100 per candidate, the person making the expenditure must either file an independent expenditure report or a signed statement that the expenditure was not made with the intent to influence the election (see below).

### **What determines if a communication is made within the presumption period?**

The presumption period applies to when the communication is disseminated to voters. The date of the dissemination is the date of the postmark, broadcast, or hand-delivery of the communication.

If expenditures are made before the presumption period to design or produce a communication that is then disseminated during the presumption period, the expenditure may nevertheless be covered by the presumption, and the costs of designing, producing, and disseminating the communication must be reported in an independent expenditure report.

### **How do I rebut the presumption that the communication is a campaign-related independent expenditure?**

To rebut the presumption, the person making the expenditure must file a signed written statement within 48 hours of making the expenditure that the expenditure was not made in order to influence the election. As a convenience, the Ethics Commission has developed a form that may be used for this purpose but using the form is not mandatory. The person filing a rebuttal statement is welcome to include any relevant evidence. It is acceptable to file the rebuttal statement by faxing it to (207) 287-6775. Please note that the rebuttal statement must be filed within the 48-hour deadline even if the deadline falls on a weekend or holiday.

If a person has a specific communication that appears to be covered by the presumption, but the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

While there is no penalty for failing to file a statement rebutting the presumption within 48 hours, if the Commission determines that the communication was covered by the presumption and an independent expenditure report was not filed on time, the person making the expenditure could be assessed a penalty for late filing.

The Commission will take into consideration any evidence relevant under the statute, including the following:

- Does the language of the communication appear designed to influence the nomination, election, or defeat of a candidate?
- Was the communication disseminated to voters in the district of the candidate(s) mentioned in the communication?
- Was the communication disseminated to voters in other districts?
- How many voters received the communication?
- Is the communication directed to voters at all?
- Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate?
- Does the communication mention all candidates running in the district?
- When was the communication produced, and when was it distributed?



The Commission will consider each rebuttal statement on a case-by-case basis. The determination will depend on the factors listed above, and any other evidence deemed relevant by the Commission.

### **What if the cost of a communication is less than \$100 per candidate?**

The definition of independent expenditure applies only to expenditures for communications. If the person making the communication did not spend or obligate more than \$100 per candidate to design, produce, or disseminate the communication, no independent expenditure report or rebuttal statement is necessary. However, once the aggregated costs for any candidate exceed \$100, a report must be filed for communications regarding that candidate.

*Example: a community organization maintains a list of e-mail addresses of individuals who are concerned about local economic development issues. At no cost, it sends an e-mail to the concerned citizens endorsing a legislative candidate. The organization would not be required to file an independent expenditure report or submit a rebuttal statement because the communication involved no expense.*

Please note that if an organization uses materials produced by another entity (e.g., a legislative scorecard), the cost of producing that material must be included in the total amount for that communication (see below).

### **Are there any expenditures that are exempt from the reporting requirement and the rebuttable presumption?**

Certain election-related activities are excluded from the legal definition of “expenditure” or “independent expenditure” in the Election Law. They do not need to be reported as independent expenditures and the rebuttable presumption does not apply to them. These excluded costs include:

- News stories and editorials distributed through a broadcasting station, newspaper, or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate or candidate’s immediate family;
- Any communication from a membership organization (e.g., a union or trade association) or corporation to its members or stockholders if that organization is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- The use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider;
- The payment by a party committee for a slate card or party candidate listing (see definition below);
- A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the call recipient’s voting position or discouraging the recipient from voting;
- A telephone call made to identify an individual’s position on a candidate, ballot question or political party as long as the communication contains no advocacy for or against a candidate; and
- A voter guide that consists primarily of candidates’ responses to surveys and questionnaires and that contains no advocacy for or against a candidate.

For a full list of exceptions to the legal definition of “expenditure,” see 21-A M.R.S.A. § 1012(3)(B).

### **Isn’t there an exception for communications naming three or more candidates?**

There is an exception for communications involving three or more candidates, but it applies only to state and local party committees and only to communications that meet the following requirements:



- The communication lists the names of at least three candidates for election to public office (this can be a combination of federal, state, and local candidates).
- The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the Internet, or personal delivery.
- The treatment of all candidates in the communication is substantially similar (although if required by federal law, a federal candidate may be treated differently).
- The content of the communication is limited to:
  - (1) The identification of each candidate, with which pictures may be used;
  - (2) The offices sought;
  - (3) The offices currently held by the candidates;
  - (4) The party affiliation of the candidates and a brief statement, including campaign slogans, about the party's or the candidates' positions, philosophy, goals, accomplishments, or biographies;
  - (5) Encouragement to vote for the candidates identified;
  - (6) Information about voting, such as voting hours and locations; and
  - (7) Campaign or party logos.

If the communication contains language outside the categories of this paragraph, it does not qualify as a slate card.

### **Are telephone communications covered by the rebuttable presumption?**

In the view of the Commission, the rebuttable presumption in Section 1019-B would cover automated telephone messages and live calls from individuals that are scripted, if the communications have the four elements described above on page 4 and do not meet the criteria to be excluded listed above.

### **Are there any individuals or organizations that are exempt from the presumption?**

Section 1019-B does not exempt any category of individuals or organizations from the rebuttable presumption. Nevertheless, as noted above, some expenditures by membership or news organizations and party committees are excluded from the legal definition of expenditure, and therefore are not covered by the independent expenditure law.

### **Does my membership organization have to report its communications to its members?**

The Election Law contains an exemption for certain communications by membership organizations that are not organized primarily for the purpose of influencing an election. Communications from those organizations to their members are not considered expenditures, and therefore are not considered independent expenditures. However, if the communication expressly advocates for the election or defeat of a candidate and the cost of the communication is more than \$50 in any one candidate's election, the expenditures must be disclosed in a special report required by 21-A M.R.S.A. § 1019-A.





**What if the costs of producing the communication are paid for by an organization that is different than the organization that disseminates the communication? Which organization must file an independent expenditure report or a rebuttal statement?**

Some of the questions posed to the Commission suggest that organizations may purchase or produce copies of a written communication (such as a legislative scorecard or voting record) and provide them to another organization that will distribute them. Persons paying for or disseminating communications covered by the presumption will be expected to demonstrate a high degree of good faith to ensure that all design, production, and distribution costs are reported to the Commission.

When calculating whether it has spent more than \$100 per candidate, an organization that has been supplied printed communications covered by the presumption and that distributes them must report *both* its own distribution costs *and* the value of the materials it has distributed. The Commission requests that the organization make a good faith effort to determine the value of the materials by ascertaining the *actual* design and production costs of the materials distributed. If the actual costs cannot be determined with a reasonable effort, the organization should estimate the fair market value of the materials it has distributed. Both the distribution costs and the value of the materials must be included in the independent expenditure report, unless the organization has filed a rebuttal statement.

*Example: A PAC receives 500 copies of literature referring to a candidate that it distributes one week before the general election in order to influence the outcome of the election. By checking with the person or organization that supplied the literature, the PAC determines that the actual cost of the literature was \$400. The PAC spends \$200 distributing the literature. The PAC should file an independent expenditure report with a total expenditure of \$600.*

**What about legislative scorecards or voting records of Legislators?**

Some organizations produce literature that summarizes Legislators' voting records on particular issues and rates the Legislators on their voting records. These communications may not contain any express advocacy for or against a candidate. However, if these communications have the four elements of the rebuttable presumption described above on page 4, the person paying for or disseminating the literature will be required to file either an independent expenditure report or a written statement rebutting the presumption if more than \$100 is spent in any candidate's race. For communications that refer to multiple candidates, the Commission's rule (attached) explains how to allocate the cost among the candidates.

If a membership organization sends a communication such as a legislative scorecard to its members, it would not be considered an independent expenditure or covered by the rebuttable presumption but the organization may have to file a report with the Commission if the communication contains express advocacy for or against a candidate.

**Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?**

The Election Law excludes from the legal definition of expenditure "activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate." (21-A M.R.S.A. §§ 1012(2)(B)(10) & 1052(4)(B)(2)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the \$100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.





### **Are polling, voter surveys, and public opinion research covered by the presumption?**

Some polls and surveys conducted over the telephone within the presumption periods could be covered by the rebuttable presumption. However, there are two types of telephone communications that are specifically excluded from the definition of independent expenditure:

- A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging from voting, and
- A telephone call that names a clearly identified candidate that is made to identify an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate.

Polls and surveys conducted by other means (e.g., mailed or online surveys and questionnaires) could be covered by the presumption but a signed written rebuttal statement can be filed stating that the purpose of the poll or survey was not to influence an election. If a poll or survey relates to a public issue and does not mention a candidate's name, it is not subject to the presumption and no report or rebuttal statement must be filed.

If polling results or public opinion research (e.g., voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

### **Are Section 527 organizations covered by the law?**

National organizations are subject to the Maine Election Law if they raise or spend money regarding candidates for state, county or local offices in Maine. This includes so-called Section 527 organizations that are organized outside the state of Maine. If a Section 527 organization makes an expenditure that contains express advocacy or is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement. The organization may also have to register as a PAC if it spends more than \$5,000 to influence an election.

### **What is the consequence of filing an independent expenditure report late?**

The late filing of an independent expenditure report can result in the assessment of a civil penalty up to \$5,000 except that if the total amount of expenditures in the report exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late. (21-A M.R.S.A. § 1020-A(4-A) and (5-A))

## **STATUTORY PROVISION ON INDEPENDENT EXPENDITURES**

### **21-A M.R.S.A. §1019-B. Reports of independent expenditures**

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

- A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and



B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day.

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

**3. Report required; content; rules. (REPEALED)**

**4. Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

**5. Exclusions.** An independent expenditure does not include:

A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and



- D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

## **COMMISSION RULE ON INDEPENDENT EXPENDITURES**

### **SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES**

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that
    - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
    - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
  - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.
    - (1) **Quarterly Reports.** *[Repealed]*



- (1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
- (1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

- B. Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.



- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
    - 1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
    - 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
    - 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
    - 4. a statement why the expenditure could not be reported by the eighth day before the election.
  - D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
  - E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
  - B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]



- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.
- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):
    - (1) Printed advertisements in newspapers and other media;
    - (2) Television and radio advertisements;
    - (3) Printed literature;
    - (4) Recorded telephone messages;
    - (5) Scripted telephone messages by live callers; and
    - (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.
  - B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):
    - (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
    - (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
    - (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
    - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and





- (5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

## **COMMISSION RULE ON COORDINATION**

### **SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS**

- 9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate’s opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the candidate. As used within this subsection, the term “candidate” includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.
  - A. In cooperation, consultation or in concert with includes, but is not limited to:
    - 1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the



content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.
- B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when
1. the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;
  2. when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or
  3. the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

- C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.
- D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:
1. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
  2. the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
  3. the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;
  4. the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candi-





date's solicitation for a donation;

5. the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or
6. the expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.